



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2011-0883; FRL-9701-5]

Approval and Promulgation of Implementation Plans; Alaska: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) submittals from the State of Alaska to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. EPA finds that the Alaska SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is concurrently approving a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone.

Specifically, EPA is approving revisions submitted by Alaska to update the SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, a general definition of ozone, federal Prevention of Significant Deterioration (PSD) program changes to regulate NO_x as a precursor to ozone, and provisions to satisfy CAA section 128 conflict of interest disclosure requirements.

DATES: This action is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R10-

OAR-2011-0883. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553-6357, e-mail address: hall.kristin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we”, “us” or “our” are used, we mean EPA. Information is organized as follows:

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I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging

period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called “infrastructure” requirements. To help states meet this statutory requirement for the 1997 8-hour ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).¹ In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards. The State of Alaska submitted a SIP to EPA on March 2, 2012, which, among other things, certified that Alaska’s SIP meets the infrastructure obligations for the 1997 8-hour ozone NAAQS. The certification included an analysis of Alaska’s SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone NAAQS. The State also submitted as part of the March 2, 2012, SIP submittal, existing state regulatory provisions to be approved into the Alaska SIP for purposes of meeting CAA section 128 conflict of interest disclosure requirements. The state requested parallel processing of the March 2, 2012, submittal. Under this procedure, the state submits the SIP revision to EPA before final adoption by the state. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes its notice of proposed rulemaking

¹ William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards.” Memorandum to EPA Air Division Directors, Regions I-X, October 2, 2007.

in the Federal Register and solicits public comment in approximately the same time frame during which the state is completing its rulemaking action.

On March 22, 2012, EPA published a notice of proposed rulemaking (NPR) for the State of Alaska to act on the State's infrastructure SIP for the 1997 8-hour ozone NAAQS (77 FR 16785). Specifically in the NPR, EPA proposed to approve Alaska's SIP as meeting the requirements for the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA also proposed to concurrently approve a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. Specifically, EPA proposed to approve revisions submitted by Alaska on April 9, 2010, and November 19, 2010, to update the SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, a general definition of ozone, and federal Prevention of Significant Deterioration (PSD) program changes to regulate NO_x as a precursor to ozone. EPA also proposed to concurrently approve the state regulatory provisions submitted by Alaska as part of the March 2, 2012, SIP submittal to satisfy CAA section 128 conflict of interest disclosure requirements.

EPA provided a 30-day review and comment period on the NPR published March 22, 2012 (77 FR 16785). The public comment period for EPA's NPR closed on April 23, 2012. EPA received no comments on the proposed action. While EPA was conducting its public notice and comment process, Alaska completed public review of the March 2, 2012, SIP submittal at the state level, as provided for through the parallel processing procedures described above.

Alaska subsequently completed its state adoption process and submitted a final SIP package to EPA on July 9, 2012. EPA has reviewed the July 9, 2012, final SIP submittal and we have concluded that the content of the final submittal is substantively identical to the provisions that were anticipated in EPA's NPR published on March 22, 2012 (77 FR 16785). Therefore, we are taking final action on our NPR.

II. Scope of Action

The SIP approval does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151. EPA will continue to implement the CAA in Indian Country in Alaska because ADEC has not adequately demonstrated authority over sources and activities located within the exterior boundaries of the Annette Island Reserve and other areas of Indian Country in Alaska.

III. Final Action

EPA is taking final action to approve the July 9, 2012, SIP provisions identified in our March 22, 2012, proposal as adequate to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is approving the following section 110(a)(2) infrastructure elements for Alaska for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA is concurrently approving a number of revisions to the Alaska SIP as a necessary condition to approving the 110(a)(2) infrastructure elements for ozone. Specifically, EPA is approving revisions submitted by Alaska on April 9, 2010, and November 19, 2010, to update the Alaska SIP to include the ozone standard at an 8-hour averaging period, the associated federal method for measuring and

monitoring ozone in ambient air, a general definition of ozone, and federal PSD program changes to regulate NO_x as a precursor to ozone. EPA is also approving the Alaska state regulatory provisions submitted as part of the July 9, 2012, SIP submittal to satisfy CAA section 128 conflict of interest disclosure requirements.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, and Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 23, 2012

Dennis J. McLerran
Regional Administrator
Region 10.

40 CFR Part 52 is amended as follows:

PART 52 -- [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et. seq.

Subpart C - Alaska

2. Section 52.70 is amended by adding paragraphs (c)(39) and (c)(40) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(39) On April 9, 2010, the Alaska Department of Environmental Conservation (ADEC) submitted a revision to the Alaska State Implementation Plan (SIP) to update the SIP to include the 2008 ozone standard at an 8-hour averaging period, the associated federal method for measuring and monitoring ozone in ambient air, and a general definition of ozone.

(i) Incorporation by reference. (A) The following revised sections of Alaska Administrative Code Title 18: Chapter 50, effective April 1, 2010:

(1) Article 1, Ambient Air Quality Management: Rule 010 Ambient Air Quality Standards, the undesignated introductory text, and (4); Rule 035 Documents, procedures, and methods adopted by reference, (b) the undesignated introductory text, and (b)(1), but only with respect to the incorporation by reference of 40 CFR part 50, Appendix P;

(2) Article 2, Program Administration: Rule 215 Ambient Air Quality Analysis Methods, (a)

introductory text, and (a)(2);

(3) Article 9, General Provisions, Rule 990 Definitions, (129).

(40) On November 19, 2010, and July 9, 2012, the Alaska Department of Environmental Conservation (ADEC) submitted revisions to the Alaska State Implementation Plan (SIP) to update the SIP to include federal Prevention of Significant Deterioration (PSD) program changes to regulate NO_x as a precursor to ozone, and provisions to satisfy CAA section 128 conflict of interest disclosure requirements.

(i) Incorporation by reference. (A) The following revised sections of Alaska Administrative Code Title 18, Chapter 50, effective December 9, 2010:

(1) Article 1, Ambient Air Quality Management: Rule 040 Federal standards adopted by reference, (h) the undesignated introductory text, only with respect to 40 CFR Part 52 and (h)(4), only with respect to the incorporation by reference date for “significant” at 40 CFR 52.21(b)(23)(i);

(2) Article 9, General Provisions, Rule 990 Definitions, (52)(A), “major stationary source,” (53)(A), “major modification,” and (92), “regulated NSR pollutant.”

(ii) Additional material. (A) The following sections of Alaska Administrative Code Title 2 and Title 9, effective February 20, 2005:

(1) Title 2, Administration: Chapter 50, Alaska Public Offices Commission: Conflict of Interest, Campaign Disclosure, Legislative Financial Disclosure, and Regulations of Lobbying; Article 1, Public Official Financial Disclosure (2 AAC 50.010 – 2 AAC 50.200);

(2) Title 9, Law: Chapter 52, Executive Branch Code of Ethics (9 AAC 52.010 – 9 AAC 52.990).

3. Section 52.96 is amended by revising paragraph (a) to read as follows:

§ 52.96 Significant deterioration of air quality.

(a) The State of Alaska Department of Environmental Conservation Air Quality Control Regulations as in effect on December 3, 2005 (specifically 18 AAC 50.010 except (7) and (8); 50.015; 50.020; 50.030(6) and (7); 50.035(a)(4) and (5); 50.040(h) except (17), (18), and (19); 50.215 except (a)(3); 50.250; 50.306 except (b)(2) and (b)(3); 50.345 except (b), (c)(3) and (l); and 50.990 except (21) and (77)) are approved as meeting the requirements of part C for preventing significant deterioration of air quality. The following regulations as in effect on April 1, 2010, are also approved as meeting the requirements of part C for preventing significant deterioration of air quality: 18 AAC 50.010 (introductory paragraph); 18 AAC 50.010(4); 18 AAC 50.035(b) (introductory paragraph); 18 AAC 50.035(b)(1), only with respect to the incorporation by reference of 40 CFR part 50, Appendix P; 18 AAC 50.215(a) (introductory paragraph and (a)(2); and 18 AAC 50.990(129). The following regulations as in effect on December 9, 2010, are also approved as meeting the requirements of part C for preventing significant deterioration of air quality: 18 AAC 50.040(h) (introductory paragraph) with respect to 40 CFR 52.21, and (h)(4), only with respect to the incorporation by reference date for “significant” at 40 CFR 52.21(b)(23)(i) and “subject to regulation” at 52.21(b)(49) for the purpose of greenhouse gases only; and 18 AAC 50.990 (52)(A), (53)(A), and (92).

* * * * *

4. Section 52.98 is added to read as follows:

§ 52.98 Section 110(a)(2) infrastructure requirements.

On July 9, 2012, the Alaska Department of Environmental Quality submitted a certification to address the requirements of CAA Section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS. EPA approves the submittal as meeting the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2012-25808 Filed 10/19/2012 at 8:45 am; Publication Date: 10/22/2012]